

**REMARKS**

Claims 10-19 and 21-23 are currently pending in the application. Please cancel claims 24-29 without prejudice or disclaimer in favor of presentation of this subject matter in a continuation application. No new matter is added.

Reconsideration of the rejected claims in view of the above amendments and the following remarks is respectfully requested.

***Advisory Action***

In response to the Advisory Action mailed January 22, 2004, Applicants submit this Supplemental After Final Amendment. In the Advisory Action the Examiner indicated the rejections under 35 U.S.C. § 112, first paragraph, have been overcome. Additionally, the Examiner has allowed claims 10-19 and 21-23 and rejected claims 24-29.

Applicants respectfully resubmit the arguments presented with regard to 35 U.S.C. § 112, first paragraph, rejection in order to overcome this rejection of record. Additionally, Applicants cancel claims 24-29 without prejudice or disclaimer to the subject matter contained therein.

Accordingly, Applicants respectfully submit that this case is condition for allowance.

***Allowable Subject Matter***

Applicants appreciate the indication that it

is agreed that the references of record do not teach or fairly suggest a tank having troughs forming channels integrally in the bottom and side walls of the tank in combination with a mattress-like filter of the type recited.

Applicants, however, submit that the recitation of “channels” in claims 10 and 24 is not new matter. Additionally, Applicants submit that the amendment to claim 24 to include the recitation of “channel” does not raise any new issues that need further search and/or consideration since this same feature was already considered as it relates to claim 10, and those claims dependent therefrom.

Applicants submit that the recitation of “channels” is not new matter. Admittingly, the specification does not specifically use the word “channel” (prior to the amendment hereto), but it is a well founded principal that the exact words of the specification do not need to be used in the claims. For example, MPEP § 2163.07(I) states, in part,

Mere rephrasing of a passage does not constitute new matter. Accordingly, a rewording of a passage where the same meaning remains intact is permissible.

In the presently claimed invention, the use of channels is a mere definition of a trough. To support this, Webster's New World Dictionary, 2<sup>nd</sup> edition, defines a trough as .... “a channel or gutter.” This clearly shows that no new matter was added in that a trough is specifically defined as a channel.

Moreover, MPEP § 608.01(o) states that

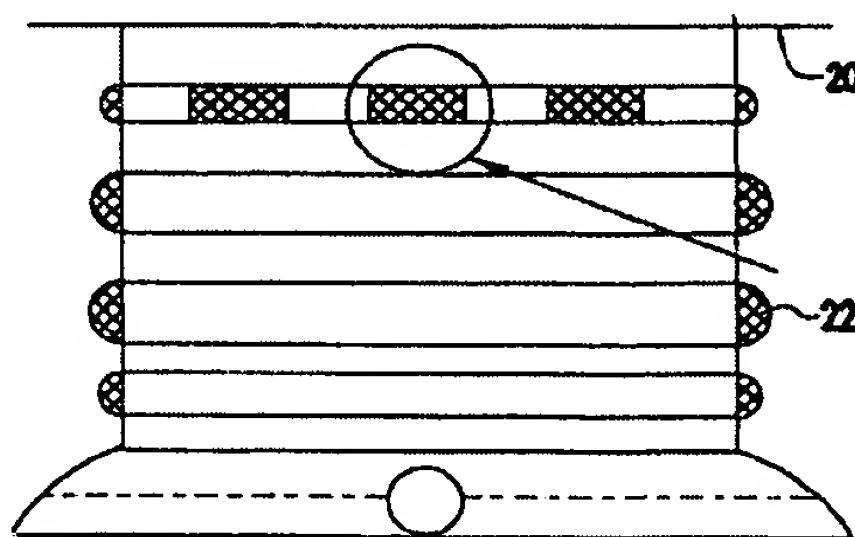
[w]hile an applicant is not limited to the nomenclature used in the application as filed, he or she should make appropriate amendment if the specification whenever this nomenclature is departed from by amendment of the claim so as to have clear support or antecedent basis in the specification for the new terms appearing in the claims.

This shows that the claim amendments are not limited to only the language that was originally used in the specification. The only requirement is that the “nomenclature” does not depart from the meaning in the specification, and that the specification may be amended to provide antecedent basis. To comply with this rule, the specification has been amended to recite the use of “channel”.

Additionally, the specification at page 7 clearly discloses “troughs”. Specifically, the specification states, in part

The tank 10 includes troughs 10a integrally formed in the bottom and sides of the tank. The troughs 10a replace the piping 12 and 14 of the embodiment of Figures 2-4.

The “troughs” feature is also shown in Figures 5 and 6. As is clearly understood by those of skill in the art, at the time of the invention, the troughs are used instead of pipes to return the effluent, for example. This is discussed with reference to Figures 2-4, when discussing the pipes. Now, as admitted by the Examiner, the troughs may include channels. In the case at hand, the troughs clearly are channels or grooves, as shown in Figure 6, as reproduced below. These channels are shown near reference numeral 22, where the tank clearly protrudes outward.



Lastly, the Examiner readily admits at page 2 of the office action that the troughs may be channels. However, the Examiner further contends that troughs may include other structures such as depression, conduits or drains. Although this is true, it merely confirms that one of ordinary skill in the art would have understood that a trough could be a channel, as it could be a depression, etc. But, the overriding factor is that the figures and the description clearly point to the fact that the troughs are channels or grooves integrally formed in the tank. Applicants further note that other words within the specification may also have different meanings, but if they are clearly defined then such definition should prevail. In this case, the troughs are forming channels.

In view of the above, Applicants submit that the 35 U.S.C. §112, 1<sup>st</sup> paragraph, rejections be withdrawn.

Also, Applicants submit that the §102(e) and §103(a) rejection be withdrawn in that the Examiner admits that no reference of record show the use of a channel integrally formed in the tank. This feature is not shown in any of the references.

Serial No.: 09/764,294

--9--

### CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicants hereby make a written conditional petition for extension of time, if required. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 23-1951.

Respectfully submitted,

Scott J. Hawranek

Registration No. 52,411

  
Andrew M. Calderon

Registration No. 38,093

**February 2, 2004**

McGuire Woods, LLP  
Suite 1800  
1750 Tysons Blvd.  
McLean, VA 22102  
(703) 712-5426

AMC/SJH/jmp  
387940v1